



February 4, 2000

Ms. Sarajane Milligan
Assistant County Attorney
Harris County, Texas
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2000-0411

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131982.

The Harris County Sheriff's Department Civil Service Commission (the "county") received a request for a list of all pending and past civil service hearings since January 1993 including the reason for the hearing and its disposition. You explain the county "does not maintain a single list which includes all the information requested" and that the responsive information "is maintained in each individual employee's file."¹ You have provided for our review a representative sample of information that is responsive to the request. You assert the requested information is excepted from public disclosure under sections 552.103 and 552.108 of the Government Code. We have reviewed the information you have submitted and considered the exceptions you assert.

In relevant part, section 552.301 of the Government Code states:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

¹The county is not required to prepare new information in response to a request for information. Open Records Decision Nos. 452 (1986), 342 (1982). Nor is the county required "to compile or extract information if it can be made available by giving the requestor access to the records themselves." Open Records Decision Nos. 243 (1980), 127 (1976). However, the county has a duty to make a good faith effort to relate a request for information to that information which it holds. Open Records Decision No. 561 at 8 (1990).

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

We note at the outset that the county received the request for information on November 16, 1999. Your letter seeking a decision from this office was dated December 3, 1999 and was received by facsimile on that date.² Thus, the county failed to request an open records decision from this office within the ten day statutory period as required under Government Code section 552.301. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). The presumption of openness can be overcome only by a compelling demonstration that the information must not be released, *e.g.*, where it is made confidential by other law or where third party interests are at issue. Open Record Decision No. 150 (1977).

The responsive information pertains to the alleged job-related misconduct of public employees and, in some instances, the reason for termination, suspension, and demotion of the employee. The common law right of privacy does not protect facts about a public employee's alleged misconduct on the job or complaints made about his performance. *See, e.g.*, Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978). We thus find no information in the submitted documents that is made confidential by law, nor does the submitted information implicate the proprietary or privacy interests of a third party.³ Because there is no indication of any compelling interest to overcome the presumption that the information at issue is public, you must release the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

²A copy of your request was also received by this office December 6, 1999 and contains a postal meter imprint dated December 3, 1999.

³In reaching our conclusion here, we assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, or the release of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

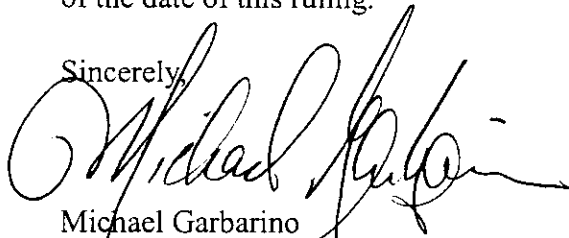
governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

Ref: ID# 131982

Encl. Submitted documents

cc: Mr. J.M. Phillips
7502 Cypress
Humble, Texas 77396
(w/o enclosures)